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**State of Vermont**  
**Vermont Department of Education**  
120 State Street  
Montpelier, VT 05620-2501

**TO:** Vermont Principals  
Vermont Superintendents of Schools  
Vermont Special Education Directors  
Vermont Family Network Co-Directors  
Essential Early Education Directors

**FROM:** Karin Edwards  
Student Support Services Director

**RE: Recent Changes to Part B IDEA-2004 Regulations**

**Date:** December 17, 2008

**FIELD MEMO # 08-14**

The United States Department of Education (USDE) issued final regulations governing the Individuals with Disabilities Act and published them in the Federal Register on December 1, 2008. According to USDE, these regulations were issued to clarify and strengthen current regulations, as published in the Federal Register on August 14, 2006, in the areas of:

- parental consent for continued special education and related services;
- non-attorney representation in due process hearings;
- State monitoring, technical assistance, and enforcement; and
- allocation of funds.

The regulations also incorporate a statutory requirement under § 300.177 relating to States' positive efforts to employ and advance in employment individuals with disabilities that was inadvertently omitted from the 2006 regulations.

**These regulations take effect on December 31, 2008.**

This memorandum is intended to summarize the changes and clarify the process for implementing these regulations within the State of Vermont.

**Parental Consent**

The most significant change in regulations concerns the right for a parent to revoke consent for special education and related services at any point before or after the initial provision of services. 34 CFR Part 300 Section 300.300(b) allows a parent to revoke consent for the continued

provision of special education and related services. The revocation must be in writing and that upon revocation of consent a public agency must provide the parent with prior written notice in accordance with § 300.503. Further, upon revocation of consent, the LEA may not continue to provide services and may not challenge that revocation using mediation, administrative complaint or request for due process. The LEA will not be in violation of the requirement to provide a free and appropriate public education (FAPE) to the child. [Attached to this memorandum is form 6a](#). This form will be used to document the parent's revocation of consent and the prior written notice regarding the timeframe for ceasing services and any implications regarding placement.

## **Hearing Rights**

The exception clause in § 300.512(a)(1), regarding the right to be represented by non-attorneys, has been revised to apply to any party to a hearing, not just parents as determined under State law. Currently, the relevant rule in Vermont is 2365.1.6.15(c)(1). Prior to the change in the federal regulations, Vermont rules allowed either party to be accompanied and advised by attorneys and non-attorneys.

## **Monitoring and Enforcement**

The regulations add some significant requirements under § 300.600. Prior to these regulations, States were expected to make determinations annually about the performance of each LEA using the same categories that the Office of Special Education Programs (OSEP) uses in their annual determinations of States. As well, OSEP expected that any identification of non-compliance be corrected as soon as possible and no later than one year after notification of non-compliance. The additions to the regulations incorporate those OSEP expectations.

In addition to the above change, § 300.602 was revised to incorporate other OSEP expectations regarding annual public reporting of the State's and LEAs' performance on indicators in the State Performance Plan. Prior to the additions here, OSEP expected State's to report to LEAs regarding their performance and that the performance be made public. This expectation is now part of the regulations. As well, States are now required to report performance to LEAs within 120 days of the State's submission of the Annual Performance Report (APR) to the USDE.

## **FOR FURTHER INFORMATION CONTACT:**

Karin Edwards  
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120 State Street  
Montpelier, VT 05620–2501

## Revocation of Consent for Provision of Special Education Services

Student Name \_\_\_\_\_ Birth Date \_\_\_\_/\_\_\_\_/\_\_\_\_ Student ID # \_\_\_\_\_

School District \_\_\_\_\_ Case Manager \_\_\_\_\_

- I hereby **revoke** my consent for the provision of special education and related services.
- I understand that once I revoke consent for my child to receive special education and related services, my child is considered a general education student and my parental rights in special education will end.
- I understand that should my child be involved in a major disciplinary situation my child would not receive the special education protections available only to students with a disability or suspected of having a disability.
- I understand that after I revoke consent for my child, the school district is not required to amend my child's records to remove any references to my child's receipt of special education and related services.
- I understand that after revoking consent for my child, I maintain the right to subsequently request an initial evaluation to determine if my child is a child with a disability who needs special education and related services.

\_\_\_\_\_  
Signature of Parent/Guardian Date: \_\_\_\_/\_\_\_\_/\_\_\_\_

Printed Name: \_\_\_\_\_

This is to provide you with written notice that the school district has received your revocation of consent for special education and related services for your child. In response, the school district will take the following action(s):

- your child will no longer be identified as having a disability under the Individuals with Disabilities Education Act (IDEA)
- your child's educational placement will be changed to \_\_\_\_\_
- The district will have no authority to provide, and will not provide, special education and related services to your child

**Effective Date of Action(s) :** \_\_\_\_/\_\_\_\_/\_\_\_\_

The following is an explanation of the action(s) listed above (include any evaluation procedures, tests, reports, other factors and other options considered and not implemented that are relevant to the actions):

### Procedural Safeguards To Protect Parent Rights

Both the state and federal laws concerning special education of children with disabilities include many parental rights. Receiving notices about the actions or decisions the school district intends to take in regards to your child and your being a part of the educational planning team for your child with a disability are examples of rights given to you by these laws. These laws also require that the school follow certain procedures to make sure you know your rights and have the opportunity to exercise those rights. You received a copy of these rights when your child was referred. You should read them carefully. If you have any questions regarding your rights, please contact the school representative listed below or any of the available resources listed in section 8 of the Parents Rights document.

Sincerely,

Signature: \_\_\_\_\_ Date: \_\_\_\_/\_\_\_\_/\_\_\_\_

Printed Name/Position: \_\_\_\_\_ Phone: ( ) - , Email: @ .

Enclosures: Procedural Safeguards

Form 6a